

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KIM L. HEITERT,

Plaintiff,

v.

MENTOR CORPORATION,

Defendant.

Civil Action No. 4:07-CV-1511-JCH

Judge Jean C. Hamilton

**AFFIDAVIT OF DUSTIN B. RAWLIN REGARDING
MENTOR CORPORATION'S FEES AND COSTS INCURRED IN THIS ACTION**

STATE OF OHIO

COUNTY OF CUYAHOGA

BEFORE ME, the undersigned authority, personally appeared Dustin B. Rawlin, who being first duly sworn, deposes and says as follows:

1. My name is Dustin B. Rawlin. I am over the age of 21 and have personal knowledge of the facts stated herein. I am an attorney licensed to practice law in the State of Ohio. I am an associate with the law firm of Jones Day. I am admitted *pro hac vice* in this matter.

2. On November 11, 2007, this Court entered a Memorandum and Order [Docket No. 10] requiring Mentor to submit an affidavit detailing its fees, costs and expenses incurred in this action so that the Court may impose terms and conditions upon Plaintiff's voluntary dismissal of this action.

3. Consistent with this Court's Order, Mentor is not requesting reimbursement of fees, costs and expenses for certain activities, including filing its answer; propounding two sets of written discovery to Plaintiff (in state and federal court); responding to Plaintiff's interrogatories and document requests; research regarding Plaintiff's claims; document collection and review; and other routine litigation activities (from service on or about May 17, 2007 to date, totaling more than \$25,000). While Mentor will incur some additional incremental costs in duplicating these efforts if Plaintiff re-files, the work that has been done in these areas will ostensibly be reused in any subsequent litigation.

4. Mentor is only seeking reimbursement (should Plaintiff re-file) for fees, costs and expenses incurred that are not reusable, such as requesting a change of judge in state court; preparing the notice of removal, state court notice of removal and corporate disclosure statement; *pro hac vice* applications; preparing the Rule 16 planning report; attending two Case Management Conferences; and responding to Plaintiff's motion for voluntary dismissal.

5. The fees listed below were incurred by Mentor in connection with defending this matter and are not reusable in subsequent litigation:

Jones Day's fees (Rawlin's and Harrison's hourly fee is \$243/hour):

<i>Date</i>	<i>Attorney</i>	<i>Action</i>	<i>Hours</i>	<i>Amount</i>
6/7/07	D. Rawlin	Draft/revise Notice of Removal	1.00	243.00
6/11/07	B. Harrison	Draft/revise Notice of Removal and Notice of Filing Notice of Removal	3.00	729.00
6/11/07	D. Rawlin	Communicate with local counsel regarding state court judge and requesting change of judge	.5	121.50
6/13/07	D. Rawlin	Draft/revise Notice of Removal	.5	121.50
7/27/07	D. Rawlin	Draft/revise Notice of Removal	.8	194.40
7/30/07	B. Harrison	Draft/revise Notice of Removal, Notice of Filing Notice of Removal, Corporate Disclosure Statement	1.50	364.50
8/1/07	B. Harrison	Draft/revise Corporate Disclosure Statement	.2	48.60

8/24/07	B. Harrison	Draft/revise Notice of Removal, Notice of Filing Notice of Removal	.9	218.70
8/27/07	D. Rawlin	Draft/revise Notice of Removal; Review/analyze Plaintiff's Voluntary Dismissal of Local Defendants	1.00	243.00
8/31/07	D. Rawlin	Draft/revise Pro Hac Vice Motion and e-file	.2	48.60
9/6/07	D. Rawlin	Communicate with local counsel regarding opposition to Motion for Voluntary Dismissal and associated research	1.00	243.00
9/18/07	D. Rawlin	Communicate with Plaintiff's counsel re: Mentor's opposition to Motion for Voluntary Dismissal	.5	121.50
9/25/07	B. Harrison	Draft/revise opposition to anticipated Motion for Voluntary Dismissal and associated research	2.20	534.60
10/11/07	D. Rawlin	Communicate with Plaintiff's counsel re: R. 16 joint planning report and requesting his participation; Draft/revise Mentor's planning report	.8	194.40
10/12/07	D. Rawlin	Draft/revise joint planning report and e-file; Review/analyze Court's CMC Order	1.20	291.60
10/21/07	D. Rawlin	Communicate with Plaintiff's counsel re: his unavailability for CMC and request to continue CMC	.5	121.50
10/22/07	D. Rawlin	Communicate with Plaintiff's counsel's secretary and Court staff re: continuing CMC	.4	97.20
10/24/07	D. Rawlin	Review/analyze Plaintiff's planning report and Motion for Voluntary Dismissal; Research re: opposing Motion for Voluntary Dismissal or imposing terms and conditions upon dismissal; Draft/revise opposition to Motion for Voluntary Dismissal	2.50	607.50
10/25/07	D. Rawlin	Plan/prepare for R. 16 conference with Court; Attend/appear for R. 16 conference via telephone; Draft/revise opposition to Plaintiff's Motion for Voluntary Dismissal; Research re: terms and conditions imposed upon dismissal	1.00	243.00
10/27/07	D. Rawlin	Draft/revise opposition to Plaintiff's Motion for Voluntary Dismissal	2.00	486.00
10/28/07	D. Rawlin	Draft/revise opposition to Plaintiff's Motion for Voluntary Dismissal	.5	121.50
10/29/07	D. Rawlin	Draft/revise opposition to Plaintiff's Motion for Voluntary Dismissal	1.00	243.00
10/30/07	D. Rawlin	Draft/revise opposition to Plaintiff's Motion for Voluntary Dismissal and e-file	.5	121.50

11/14/07	D. Rawlin	Plan/prepare for R. 16 conference with Court; Attend/appear for R. 16 conference via telephone	1.00	243.00
			Subtotal	\$6,366.60

Local counsel Blackwell Sanders' fees (Ludwig's hourly fee is \$245/hour):

<i>Date</i>	<i>Attorney</i>	<i>Action</i>	<i>Hours</i>	<i>Amount</i>
6/13/07	F. Ludwig	Communicate with D. Rawlin and Supreme Court re: Pro Hac Vice application	.4	98.00
6/21/07	F. Ludwig	Communicate with D. Rawlin and Supreme Court re: Pro Hac Vice application and filing	.2	49.00
6/22/07	F. Ludwig	Draft/revise Notice of Hearing on D. Rawlin's Pro Hac Vice application and memorandum in support	.4	98.00
7/2/07	F. Ludwig	Attend/appear for Hearing on D. Rawlin's Pro Hac Vice application	1.10	269.50
7/3/07	F. Ludwig	Communicate with D. Rawlin re: filing for a change of judge in state court	.3	73.50
7/10/07	F. Ludwig	Draft/revise Application for Change of Judge and Notice of Hearing	.4	98.00
7/26/07	F. Ludwig	Attend/appear for Hearing on Mentor's Application for Change of Judge	.9	220.50
8/1/07	F. Ludwig	Review/analyze Notice of Removal, Notice of Filing Notice of Removal, Corporate Disclosure Statement	.4	98.00
8/27/07	F. Ludwig	Draft/revise Pro Hac Vice Motion and e-file	.2	49.00
9/6/07	F. Ludwig	Communicate with Plaintiff's counsel regarding Mentor's consent to Motion for Voluntary Dismissal	.2	49.00
10/8/07	F. Ludwig	Review/analyze correspondence from D. Rawlin to Plaintiff's counsel re: R. 16 joint planning report	.2	49.00
10/15/07	F. Ludwig	Review/analyze Mentor's proposed joint planning report	.2	49.00
10/25/07	F. Ludwig	Review/analyze Plaintiff's Motion for Voluntary Dismissal	.1	24.50
10/30/07	F. Ludwig	Review/analyze proposed Opposition to Plaintiff's Motion for Voluntary Dismissal; Communicate with D. Rawlin re: edits to proposed Opposition to Plaintiff's Motion for Voluntary Dismissal	.6	147.00
			Subtotal	\$1,372

6. The costs and expenses listed below were incurred by Mentor in connection with defending this matter and are not reusable in subsequent litigation:

Jones Day's costs and expenses:

<i>Item</i>	<i>Amount</i>
Pro Hac Vice fee (state court)	100.00
Pro Hac Vice fee (federal court)	100.00
Subtotal	\$200.00

Local counsel Blackwell Sanders' costs and expenses:

<i>Item</i>	<i>Amount</i>
Copy of state court file for removal	18.00
Master File Court Filing Service	45.00
Master File Court Filing Service	15.00
Copies of recent additions to state court file for removal	17.70
Removal fee	350.00
Subtotal	\$445.70

7. Mentor incurred \$8,384.30 in non-reusable attorneys' fees, costs and expenses.

8. Upon information and belief, the fees, costs and expenses incurred were reasonable for the St. Louis area at the time they were provided.

FURTHER AFFIANT SAYETH NOT.

Dustin B. Rawlin
Dustin B. Rawlin, Esq.

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

Sworn to and subscribed before me this 7 th day of November, 2007.

Beverly H. Thomas
Notary Public

BEVERLY H. THOMAS
Notary Public - State of Ohio, Cuyahoga
My Commission Expires 7/31/09